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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/529,638	06/05/2000	OLLE CARLBARK	000500-252	9552
7590	11/02/2004		EXAMINER	
RONALD L GRUDZIECKI BURNS DOANE SWECKER & MATHIS PO BOX 1404 ALEXANDRIA, VA 22313-1404			ANDERSON, CATHARINE L	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	Applicant(s)
09/529,638	CARLBARK ET AL.
Examiner	Art Unit
C. Lynne Anderson	3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on 24 August 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 4-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 4-20 and 26-30 is/are allowed.
- 6) Claim(s) 21-25 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3) Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

The declaration filed on 24 August under 37 CFR 1.131 is sufficient to overcome the Damaghi et al. reference.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over New et al. (H1440) in view of Herrin et al. (5,706,524).

New discloses all aspects of the claimed invention with the exception of stiffening elements. New discloses a garment, as shown in figure 6, comprising an absorbent part 14 and two separate waist belts 12. The waist belts 12 extend in the longitudinal direction, have one end permanently fastened to the absorbent part, and the opposite ends of the belts are adapted to be fastened together around the waist of a wearer.

Herrin discloses a garment having waist belts 30 that have a stiffening material 33, as shown in figure 4, that varies in the cross-direction of the belts 30. The stiffening material 33 is extensible in the longitudinal direction. The belts 30 have a piece at the end that is free of stiffening material 33, as shown in figure 4.

The belts 30 of Herrin provide good stretch and recovery characteristics, and are easy to attach, as disclosed in column 2, lines 50-52.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the garment of New with the waist belts of Herrin, to provide good stretch and recovery characteristics, and easy attachment.

With respect to claim 22, Herrin discloses the extension coincides with essentially the length of the belts 30.

With respect to claim 23, Herrin discloses the belts 30 fasten with releasable fasteners 36, 37. New discloses the belts 12 fasten with releasable fasteners 18.

With respect to claim 24, New discloses the absorbent part 14 comprises elastic 36.

With respect to claim 25, Herrin discloses both belts 30 have a piece at the end that is free of stiffening material 33, as shown in figures 1 and 4.

#### ***Allowable Subject Matter***

Claims 4-20 and 26-30 are allowed.

#### ***Response to Arguments***

Applicant's arguments filed 24 August 2004 with respect to the rejection of claims 21-25 under 35 U.S.C. 103(a) have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642

F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The modification of the article of New in view of the teaching of Herrin results in the claimed invention. The rejection does not depend on the belt portions of New being replaced with the belt portions of Herrin, but rather the modification of the belt portions of New using the stiffening elements taught by Herrin to provide belt portions with improved flexibility. That the belt portions disclosed by New and Herrin are not identical in construction is a moot point. The function of the belt portions of New and Herrin (i.e. to support an absorbent article around the waist of a wearer) is the same, and therefore modifying the belt portions of New in view of the teaching of Herrin would be obvious to one of ordinary skill in the art.

#### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will

the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (703) 308-1412. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

UNA  
cla  
October 19, 2004

  
Larry I. Schwartz  
Supervisory Patent Examiner  
Group 3700